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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/939,451	08/24/2001	James T.C. Yuan	9584/52	3832

7590

01/23/2004

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EXAMINER

WEINSTEIN, STEVEN L

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 01/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/939,451

Applicant(s)

YUAN, JAMES T.C.

Examiner

Steven L. Weinstein

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-32 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 8/24/01
- 4) ☐ Interview Summary (PTO-413) Paper No(s) ____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Brunner (3,670,874).

Brunner discloses packaging a food product that is to be irradiated in an atmosphere that has oxygen removed therefrom so that oxidation of the food product is to be impeded. He does this because he intends to irradiate the food and it was well known that irradiating food in an oxygen-containing atmosphere is harmful to the food, which is exactly applicant's reason for removing oxygen. Brunner discloses that the oxygen can be removed by vacuum packaging, inert gas flushing (Col. 1, Para. 5) and providing oxygen binding agents or scavengers, which bind or remove oxygen either chemically or physically (Col. 2, para. 2). In regard to claim 4, as noted above, Brunner discloses an oxidant reactive chemical substance.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 2,3 and 8-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brunner ('874) in view of Titchenal et al (3,681,092), Weinke (3,574,642) and Hirsch et al (4,055,672), further in view of Urbain (2,963,369).

Claim 2 differs from Brunner in the recitation that the packaging is a multiplayer film with an inner O₂ permeable layer and an outer O₂ impermeable layer. As disclosed, this is to enable one to return the discolored food product back to red when the food product is meat. Meat is not recited. The discoloration, as disclosed, is not due to the irradiation, which is controlled by the various oxygen removing techniques, but by the fact that the meat is exposed to a low or no oxygen atmosphere, which changes the red color of the meat. As evidenced by Titchenal et al, Weinke and Hirsch et al, it was notoriously conventional to employ the recited laminate when packaging fresh meat under low oxygen atmospheres and to eliminate the outer oxygen impermeable atmosphere when one is to display the packaged product to restore the red color and to modify Brunner and provide the multiplayer packaging for its art recognized and applicants intended function would have been obvious. Urbain is relied on to show that even discoloration brought on by irradiation can be restored with oxygen, albeit using higher pressure or concentration. Claim 8, which recites packaging a food product in a multiplayer film having an inner O₂ permeable layer-and an outer O₂ impermeable layer is rejected for the reasons given above. In regard to claims 10 and 11, which recite the permeability of the film, since Titchenal, Weinke and Hirsch et al disclose the films for their art recognized and applicant's intended function, the particular permeabilities would have been an obvious routine determination, if not already inherent in their disclosures. In regard to claims 12 and 13, since Brunner discloses inert gas and irradiation, conventional inert gas and the particular the particular irradiation source selected is seen to have been an obvious routine determination.

Claim 4-7, 18-21, and 22-27, and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brunner ('874) in view of Todd (6,099,879).

Claim 4 recites applying an oxidant reactive chemical substance to the food product. As enhanced by Todd, it was known to provide such substances to food that is to be irradiated for applicant's reason (Col.4, Para.1), Todd discloses antioxidants which include BHT and sodium tripolyphosphate which is a chelating agent, although Todd refers to it as an antioxidant. These terms are sometimes used interchangeably in the art and claim 6 only refers to the chelating agent as a phosphate. In regard to claim 22, note that the order of the steps are not recited.

Claims 23-26 and 32 rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 4-7, 18-21, 22-27, and 31, immediately above, and further in view of Titchenal, Weinke and Hirsch et al for the reasons given above.

Claim 22 and 27-30 are rejected under 35 U.S.C. 102(b) as being anticipated by Todd ('879).

Note that claim 22 does not provide any sequence for the steps.

Claim 23-26 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 22 above, and further in view of Titchenal et al ('092), Weinke ('642) and Hirsch et al who are applied as above to teach multilayer packaging for food which discolors in inert gas or under vacuum.

Claim 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over Todd ('879) in view of Brunner ('874) who teach inert gas packaging and irradiation are conventional.

The reminder of the references cited on the USPTO 892 form are cited as pertinent art.

Application/Control Number: 09/939,451
Art Unit: 1761

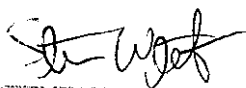
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven Weinstein whose telephone number is 571-272-1410. The examiner can generally be reached on Monday-Friday 7:00am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application is assigned is 703-872-9306 for both regular communications and for after final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

S. Weinstein/lap
December 10, 2003


STEVE WEINSTEIN
PRIMARY EXAMINER
1/11/04 1761